IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.237 OF 2000

Shri Narayan Hari Naik,
resident of House No.252,
Taleigao,Panaji-Goa ... PETITIONER

VERSUS

Agarwal Minerals(Goa)
Pvt., Ltd., through Shri
Gangadhar N.Agarwal, having
registered office at Anand
Bhavan Station,
Road, Margao,Goa ... RESPONDENT

Shri S.D. Lotlikar, Sr. Advocate, with Shri A.D. Bhobe, Advocate,for the Petitioner.

Shri S.R. Rivonkar, Advocate, for the Respondent.

CORAM : V.C. DAGA,J.

DATED : JUNE 21, 2002

ORAL JUDGMENT

This Revision is directed against the Order dated 22nd June,2000 passed by the Civil Judge, Senior Division,Panaji, in Special Civil Suit No.229/91/A whereby the issue with respect of the status of the Plaintiff as to whether he was the tenant of the suit property and became deemed purchaser thereof has been refused to be referred to the Tenancy Court.

2. It is not in dispute that by way of

additional issue, the following issue was framed by the trial Court:-

> " Whether the Plaintiff proves that he was the tenant of the suit property and became the deemed purchaser thereof on 20th April, 1976 ?"

3. The pleadings, in short, relating to the framing of this issue are that the Plaintiff claimed to be tenant of the suit property and filed the present suit in that capacity stating that he remained in possession of the property in his capacity as agricultural tenant. To this the defence of the Defendant was that the Plaintiff was not the tenant of the suit property. These rival pleadings gave rise to the above issue. For this reason, precisely, the said above issue came to be framed upon the application moved by the Plaintiff on 15-4-1998 to which no objection was given by the Defendant. Therefore, it is clear that there is no dispute that above issue is a trial issue.

4. Undisputedly, the issue involved is of the status of the Plaintiff. The issue of tenancy can only be decided by the Mamlatdar in terms of Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act (hereinafter called "the said Act"). Section 58 of the said Act clearly provides that save as otherwise provided in the said Act, no Court shall have jurisdiction to decide or deal with any question which is by or under the said Act is required to be decided or dealt with by the Mamlatdar. In view of the clear provision debarring the civil court from deciding the issue of tenancy and there being a corresponding specific provision empowering the Mamlatdar to decide and deal with the question as to whether a person is a tenant or not, ex facie, the Civil Court will have no jurisdiction to deal with or decide with this issue.

5. The Apex Court in the case of **Shri Inacio Martins v. Narayan Hari Naik and others** (AIR 1993 SC 1756), has clearly held that whenever the issue of tenancy is raised by the party to the proceedings in the Civil Court, such an issue is necessarily to be referred to the Mamlatdar who is competent to deal with the said issue under the Act. In this view of the matter,

it is clear that by virtue of the law laid down by the Apex Court it was incumbent upon the Civil Court to make a reference to the Mamlatdar and, after the return of the decision by the Mamlatdar, to proceed with or decide the suit. In this view of the legal position, in my opinion, the impugned Order cannot stand to the scrutiny of law. It suffers from material illegality and is liable to be quashed and set aside.

6. In the result, the Revision is allowed. The Civil Court is directed to refer the said issue of tenancy to the Mamlatdar and proceed wit the suit after getting a decision on that issue.

No order as to costs.

V.C. DAGA,J.

ac.